1

(143)

A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

CORAM : HON'BLE SHRI S.R. NAYAK, CJ.
HON'BLE SHRI V.K. SHRIVASTAVA, J.

WRIT PETITION NO. 2375 of 2006

Petitioner — Bilaspur Infrastructures Pvt. Ltd., Registered Office at "BF-1", Rajiv Plaza, Oppt. UTI Bank, Bilaspur (CG) through its Director Ashok Agrawal, S/o. Late Jagmohan Das Agrawal, Aged about 42, R/o. Kranti Nagar, Bilaspur (Chhattisgarh).

Versus

Respondents

1. State of Chhattisgarh through Secretary, Department of Urban Administration & Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh).
2. Municipal Corporation, Bilaspur (CG) through its Commissioner, Bilaspur (CG).
3. Commissioner, Municipal Corporation, Bilaspur (CG).

Present:

Shri Manindra Shrivastava, Sr. Advocate with Shri Amrito Das, counsel for the petitioner.

Shri Vinay Harit, Deputy Advocate General for respondent No.1/State.

Smt. Chitra Shrivastava, standing counsel for respondents No.2 and 3.

ORAL ORDER

(Dated 9th November, 2006.)

The following oral order of the Court was passed by

S.R. Nayak, CJ. :

This writ petition has been filed by Bilaspur Infrastructures Pvt. Ltd., under Article 226 of the Constitution of India for a writ of mandamus restraining the respondents, particularly Municipal Corporation, Bilaspur – second respondent herein from enforcing and operating Clause 3 of the agreement dated 27/03/2003 that reservation roster as provided under

(144)

Rule 8 of the Chhattisgarh Municipal Corporation (Transfer of Immovable Property) Rules, 1994 (for short "the Rules") in allotment of constructed shops shall be followed by party No.2 to the agreement, that is to say, the petitioner, by declaring the same to be violative of Article 14 of the Constitution of India.

2) Back-ground facts leading to filing of this writ petition be noted in the first instance and in brief, they are as follows:

With a view to establish a huge ultra – modern and fully equipped Shopping Complex in the city of Bilaspur, the Municipal Corporation Bilaspur, (for short "the Corporation") invited tenders for construction of Shopping Complex under Promoter-Builder Scheme (for short "PBS"). Responding to the tender notification, petitioner submitted his tender to construct a Shopping Complex to be known as "Rajiv Plaza". At this stage itself, it needs to be noticed that admittedly in the tender notification no clause is incorporated providing for reservation in favour of any category or categories of persons, but, according to the petitioner as stated in para 5.3 of the writ petition during the course of discussions and negotiations, the Corporation Authorities expressed that certain reservations have to be made for which the petitioner resented. However, having regard to urgency of constructing the shopping complex to meet the needs of growing city of Bilaspur, the reservation issue and opposition raised by the petitioner were left open to be considered at a later stage. Thereafterwards there was an agreement entered into between the parties on 27-03-2003. It is true that in terms of Clause 3 of the agreement provision is made for reservation, but, it is the specific case of the petitioner that it has signed the document with protest and it did not agree for reservation.

145

3) It is submitted by the petitioner that by investing huge sum of money which was borrowed from Commercial Banks, he has constructed the shops and on account of the insistence of the Corporation that the reservation provided under Rule 8 of the Rules should be complied with, the petitioner was not in a position to allot the shops inasmuch as there are no required number of persons from the reserved categories for allotment of shops. Under the circumstances, this writ petition was filed praying for the relief already noted above.

4) We have heard Shri Manindra Shrivastava, learned Sr. Advocate appearing with Shri Amrito Das, counsel for the petitioner, Shri Vinay Harit, learned Deputy Advocate General for respondent No.1/State and Smt. Chitra Shrivastava, learned standing counsel for respondents No.2 and 3.

5) Shri Manindra Shrivastava, at the threshold, pointed out that Rule 8 of the Rules was never applied in any PBS either in undivided State of Madhya Pradesh or in the newly formed State of Chhattisgarh; the petitioner was alone picked up for this hostile treatment without any reason and rhyme and without any rational basis; as could be seen from Annexure P/5, even Raipur Municipal Corporation did not apply Rule 8 of the Rules in its PBS. Shri Manidnra Shrivastava would draw our attention to what is averred in sub-paras 5.3 to 5.6 of the writ petition and point out that none of the averments made in those sub-paragraphs of the writ petition are specifically denied by the Corporation. According to learned Sr. counsel for the petitioner, the treatment meted out to the petitioner by the Corporation would tantamount to an invidious discrimination and violative of Article 14 of the Constitution. Shri Manindra Shrivastava would next contend that even otherwise, in the facts and circumstances of the case, the insistence of the Corporation that the shops

(146)

should be allotted in terms of Rule 8 of the Rules read with clause 3 of the agreement dated 27/03/2003 is totally arbitrary and unreasonable inasmuch as there are no persons/applicants from the reserved categories to purchase the shops and, therefore, it has resulted in large number of shops built by the Promoter-Builder at a huge expenditure remaining vacant and unutilized at the peril of societal and public interest.

6) Smt. Chitra Shrivastava, learned Standing Counsel for the Corporation, *per contra*, drawing our attention to Clause 3 of the agreement dated 27/03/2003 and also the provisions of Rule 8 of the Rules, would submit that the petitioner being a party to the agreement is bound by the agreement and, therefore, it could not have any legitimate objection to the insistence of the Corporation that the petitioner-Promoter should provide reservations in the matter of allotment of shops in terms of Clause 3 of the agreement dated 27/03/2003 read with Rule 8 of the Rules.

7) Having heard learned counsel for the parties, the point that falls for our consideration is whether the petitioner has made out any case for granting relief sought in the writ petition. It is well settled that any state action wherever it operates could be tested on the touchstone of Article 14 postulates. It is needless to state that the Corporation being a statutory authority is a 'State' within the meaning of Article 12 of Constitution and, therefore, its action too could be tested on the touchstone of Article 14 of the Constitution of India. Since the guarantee of equal protection and postulates of Article 14 i.e., reasonableness, fairness and non-arbitrariness embrace the entire realm of State action, it would extend not only when an individual is discriminated against in the matter of exercise

(147)

of his rights or in the matter of imposing liabilities upon him, but also in the matter of granting privileges or imposing liabilities or conditions etc.

8) In the premise of above well settled principle of judicial review, when we look at the facts of the case, we do not find any reason or rhyme to show that the petitioner should be differentiated for a different treatment from the treatment meted out to similarly circumstanced other promoters-builders.

9) In paras 5.3, 5.4, 5.5 and 5.6 petitioner has stated thus :

> "**5.3**. That, when the petitioner having come across the tender notice issued by the Corporation for construction of Shopping Complex to be known as "Rajiv Plaza", approached the Corporation submitting his candidature. It is relevant to mention here that in the Tender Notice no condition with regard to reservation of shops in the matter of allotment was included. During the course of discussions and negotiations, the Corporation authorities, however, expressed that certain reservations will have to be made. At this stage, it would be pertinent to mention here that neither in the erstwhile State of Madhya Pradesh nor in the newly carved out State of Chhattisgarh reservation in allotment of shops was ever made applicable under Promoter-Builder Scheme. Petitioner, on the basis of the best information available with him, categorically asserts that in the last 10 years since the time the Promoter-Builder Scheme has come up, reservation was never made applicable in Promoter-Builder Scheme. In the State of Chhattisgarh also, at different places, the Corporations while awarding the contract for construction under Promoter-Builder Scheme never imposed any condition of reservation in allotment. Following are some of the illustrations.
>
> 1. Ravi Bhawan, Raipur
> 2. Administrator Bungalow, Raipur
> 3. Millenium Plaza, Raipur
> 4. Bus Stand, Raipur
> 5. Shaheed Smarak –Raipur

(148)

6. Bhainsthan Vyavasayik Parisar, Raipur
7. C.I. Homes, Bhopal.

There may be many more examples all over the State whether it be prior to reorganization or after reorganization that various Local Bodies, Corporations, Authorities, Government got Shopping Complex and Commercial buildings constructed under Promoter-Builder Scheme where no such reservation was ever made.

5.4 That, moreover, there is no statutory obligation created on the Corporation to provide such reservation in allotments either under the provisions of Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as the Act of 1956) or Chhattisgarh Transfer of Immovable Property Rules, 1994. Section 80 of the Act of 1956 makes provisions governing the disposal of municipal property or property vesting in or under the management of the Corporation. In addition to this, other provisions as contained in Sections 81, 81-A, 82 etc., also do not oblige the Corporation to make any such reservation in the matter of disposal of property, which includes grant of deeds. In the rules framed in the year 1994 by the erstwhile State of Madhya Pradesh and which are applicable in the State of Chhattisgarh also, known as "Transfer of Immovable Property Rules, 1994 (hereinafter referred to as the Rules of 1994) rule 8 makes provisions regarding reservation of shops and it clearly states that the reservation shall be made in respect of shops constructed by the Corporation. Thus, it was for this reason in the past also various Corporations never imposed the condition regarding reservation in allotment in cases of Promoter-Builder Scheme.

5.5 That, in order to make its position and terms clear, petitioner, therefore, in writing submitted before the Corporation that it would enter into agreement "under protest" only. A copy of letter dated 04/03/2003 received in the office of the Corporation on 06/03/2006 is annexed

(149)

herewith and marked as **ANNEXURE P-2.** A copy was also submitted in the office of the Collector as well as Mayor, Municipal Corporation, Bilaspur.

5.6 That, the Corporation having apprised of the situation and there being no condition in the Tender Notice also, petitioner insisted that no such condition should be imposed. While the negotiations were going on and though in principle, Corporation authorities agreed to this preposition having found that in other Corporations and even in the Bilaspur Corporation no such condition of reservation was ever applied in Promoter-Builder Scheme, requested the petitioner to leave this issue to be decided later on between the parties and to proceed with the construction because it was a situation where new State had come into being and Bilaspur had become the second most important city and it had become eminent to immediately develop a big Shopping Complex to cater to the need of the growing population, increasing commercial, financial, industrial activities and establishment of State Level Institutions at Bilaspur. Petitioner can say that on petitioner's insistence that no such condition of reservation should be imposed, even at that time not only the Corporation officials but also the officials of the Urban Administration & Development Department of the State Government requested the petitioner that, for the time being, this may not be made an issue so as to forestall execution of agreement between the parties and in order to proceed immediately towards construction of the Shopping Complex, an open clause may be inserted in the agreement so as to resolve the issue for future. As a public spirited person, petition a permanent resident of Bilaspur and the Director of the Company being resident of the place, and in view of emergency of new State and urged to develop Bilaspur into a beautiful city, petitioner agreed to this preposition that the open clause will be inserted in the agreement between the parties so that this issue may be decided

(150)

later on. In the meanwhile, petitioner proceeded to raise construction so that it could be completed within time and a beautiful Shopping Complex in the heart of the city may be presented to the residents of the City. All kinds of assurances were lent to the petitioner by the Corporation authorities as also the State authorities that the issue with regard to reservation would definitely be looked into and if found that in all other cases no such condition of reservation in allotment under Promoter-Builder Scheme is made, appropriate and necessary modification in agreement would be made. It was this assertion and representation specifically and categorically inserted in the agreement by way of Clause-29 that petitioner acted on this solemn representation by the State Authorities proceeded to accept the award of contract, entered into agreement and raised construction to bring into existence the "Rajiv Plaza", the Shopping Complex in the heart of the city. A copy of the agreement dated 27/03/2003 entered into between the petitioner and the Corporation is annexed herewith marked as **ANNEXURE P-3**."

10) It needs to be noticed that as to what transpired in the course of negotiations and discussions as set out in the aforementioned paragraphs by the petitioner is not denied by the Corporation. It is not as if the Corporation has no power or discretion to vary, modify, or amend the conditions to be incorporated in the PBS. Clause 29 of the agreement provides that though the builder-promoter is bound to obey the conditions of the agreement, if the builder-promoter obtains any modification or variance or amendment of the condition and relaxation, the Corporation is also bound by such variance, modification and relaxation. In the context of Clause 29 read with what has been stated in paras 5.3 to 5.6, it is obvious that though clause 3 of the agreement speaks about the reservation to be provided in the matter of allotment of shops in terms of Rule 8 of the Rules, the Corporation at the commencement of awarding

151

the contract to the petitioner did not insist for reservation, but, kept the issue open to be considered at a later stage. In other words, having regard to the urgency and imminent need for construction of the building complex to meet the needs of the growing city of Bilaspur, without insisting that the petitioner should comply with the requirement of clause 3 of the agreement, the petitioner was permitted to go ahead with the construction of the building complex. Be that as it may, before us also, the Corporation has not pointed out any weighty or substantive circumstance which could persuade us to think that the petitioner should be treated differently from the other similarly circumstanced promoters-builders. 'Likes should be alike' is a constitutional creed flowing from Article 14 of the Constitution. In that view of the matter, we find considerable force in the submission of Shri Manindra Shrivastava, learned senior counsel that the impugned insistence of the Corporation for reservation would tantamount to an invidious discrimination.

11) The insistence of the Corporation for reservation in the peculiar facts and circumstances of the case would also show that the insistence is otherwise arbitrary and unreasonable. We say this, because, the claim of the petitioner that there are no required number of applicants from the reserved categories for allotment of shops is not denied by the Corporation. Be that as it may, even in the course of arguments also, learned senior counsel would tell us that there are sufficient number of vacant shops which could be allotted to the applicants from the reserved categories, but, unfortunately, there are no required number of applicants from the reserved categories. The impugned insistence of the Corporation has led to an impracticable situation where though with a laudable object of catering to the needs of growing city of Bilaspur, building complex was constructed, large number of shops are allowed to

(15)

remain vacant, and there is no hope of allotting of these shops to persons so long as the Corporation insists for reservation. Building Complex is a social utility and it is meant to be used for meeting the needs of the society, and shops constructed by the promoter-builder cannot be allowed to be kept vacant for years to come. Looking from that angle also, we are of the considered opinion that the insistence of the Corporation that they should allow the shops strictly in accordance with reservation without appreciating the hard facts of the case and the situation highlighted by the petitioner – builder is nothing, but arbitrary and unreasonable. We do not think that public justice is served by the Corporation by insisting for reservation particularly because there are no sufficient number of applicants from the reserved categories. In that view of the matter, in our considered opinion, the insistence of the Corporation instead of serving public interest, would operate as a prejudice to the public interest. We do not find any justification for the Corporation to insist for reservation. If the Corporation was really serious about providing the shops to persons belonging to the reserved categories, they would have taken steps to find required number of persons from the reserved categories and placed their cases before the petitioner-promoter for consideration and allotment. Admittedly such a course was not adopted by the Corporation for the reason best known to it.

12) In the result, and for the forgoing reasons, we dispose of the writ petition and direct the respondents not to insist on reservation in the matter of allotment of shops in terms of Rule 8 of the Rules.

In the facts and circumstances of the case, the parties shall bear their respective costs.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice

Raju